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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/891,902

06/26/2001

Michael J. Stickney

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EXAMINER

MEDLEY, MARGARET B

ART UNIT

PAPER NUMBER

1714

DATE MAILED: 05/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/891,902

Applicant(s)

STICKNEY ET AL.

Examiner

Margaret B. Medley

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H9

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18, 20-37 and 42-64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 45-64 is/are allowed.
- 6) ☒ Claim(s) 1-18, 20, 21, 24, 32-35, 43 and 44 is/are rejected.
- 7) ☒ Claim(s) 22, 23, 25-31, 36, 37 and 42 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☒ Interview Summary (PTO-413) Paper No(s) 8.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### DETAILED ACTION

This office action is in response to the after final amendment, Paper No. 7 dated May 12, 2003 that has been entered of record. The pending claims of record are claims 1-18, 20-37 and 42-64. The amendments to claim 1 have been entered of record. Cancells 38-41 and claims 65-69 have been canceled.

The finality of the rejection of the last Office action and the indicated allowance of the instant application in view of the discussed examiner's amendment on May 21, 2003 is withdrawn in view of the newly discovered prior art reference U.S. Patent No. 5,232,464 of Klezl. A new art rejection is set forth below.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-8, 12 and 43-44 are rejected under 35 U.S.C. 102(b) as being clearly by Klezl.

Patentee teaches and discloses a fuel comprising gasoline and 2.0 percent by volume of methyl formate that clearly anticipates the instant claims directed to gasoline fuel and methyl formate, in the entirety, especially example 1.

Claims 1-3, 5-7, 9, 11, 19, 32-35 and 44 for reasons made of record in Paper No. 4 dated July 16, 2002 remain rejected under 35 U.S.C. 102(b) as being clearly anticipated by Killick et al (Killick) WO 95/02654.

Claims 1-4, 6-8, 11, 19, 32-34 and 43-33 for reasons made of record in Paper No. 4 dated July 16, 2002 remain rejected under 35 U.S.C. 102(b) as being clearly anticipated by Mayerhoffer (Mayerhoffer) 3,860,262.

Claims 1-3, 4-7, 9, 11, 19, 32-35 and 43-44 for reasons made of record in Paper No. 4 dated July 16, 2002 remain rejected under 35 U.S.C. 102(b) as being clearly anticipate by Tunison 1,423,048.

Claims 1 and 15-18 for reasons made of record in Paper No. 4 dated July 16, 2002 remain rejected under 35 U.S.C. 102(b) as being clearly anticipated by Dorer et al (Dorer) 3,658,495.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 42 for reasons made of record in Paper No. 4 dated July 16, 2002 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Killick et al (Killick) WO 95/02654 and Dorer 3,658,495 as applied to claims 1 and 15-18 above, and further in view of Gyimah et al (Gyimah) 5,302,592.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant

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regards as the invention. The first and second compound of claim 1 fail to correspond to correspond to claim 20 from which it depend directly, but would be allowed upon the removal of the 112 issue.

Claims 32-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The stabilizer (set forth in the specification as an alcohol) and the alcohol of claims 33-35 appear to be in conflict with formulas I, II, III and IV oxygenates of claim 1. Clarification is requested.

Claims 45-64 contains allowable subject matter and would be allowable upon the cancellation of the claims that are not allowable.

Claims 22-23, 25-31 and 36-37 are objected as depending upon claims that are not allowable.

The examiner suggest that applicants may overcome the prior art made of record by amending claim 1 to delete the phrase "consists essentially of" and to insert the term ---is--- and to amend the formula to delete the methyl formate of the newly relied on cited art of Klezl U.S. 5,232,464, to cancel claims 32-35, and to amend claim 36 at line 1 to delete "32," and insert the following phrase ---1, further comprising a stabilizer--- to overcome the teachings of the relied on prior art and to place the instant application in condition for allowance.

Applicant's arguments filed May 12, 2003 have been fully considered but they are not persuasive.

Applicants' claims are open-ended and would not exclude the alcohol of Killick. The oxygen-containing component contains the partially open-ended phrase "consists essentially of" that does not exclude the alcohol of Killick.

The arguments with respect to claims 38-40 are deemed moot in view of applicants' cancellation of claims 38-40.

Applicants' arguments with respect to Sieg are deemed moot in that the instant claims do require the presence of a percentage of oxygenate and therefore does rebut the teachings of Sieg.

Applicants' arguments with respect to Smith are deemed moot in that the instant claims do require the presence of a percentage of oxygenate and therefore does rebut the teachings of Smith.

Applicants' instant claims do require the presence of at least 1% percentage of oxygenates and therefore does not rebut the teachings of Mayerhoffer. The claims as amended do not rebut the teachings of patentee because the claims language "consists essentially of" does not exclude the other oxygenate additives of patentee.

Applicants' claims only require at least one compound of formula I and therefore is anticipated by the teachings of Tunison. The examiner maintains the position on record that heavy oil is a petroleum distillate, note lines 60-65, and is the diesel fuels of the instant claims. Therefore the instant claims are anticipated by the teachings of patentee.



Dorer composition anticipates the instant claims even though it may contain cleaning properties. The claims as amended do not rebut the teachings of patentee because the claims language "consists essentially of" does not exclude the other oxygenate additives of patentee.

The 103 rejections are maintained in that the instant claims do not require the presence of any range limitations to overcome the teachings of the prior art cited in the 103 rejections made of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret B. Medley whose telephone number is 703-308-2518. The examiner can normally be reached on Monday-Friday from 7:30 am to 6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 703-306-2777. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

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Dorer composition anticipates the instant claims even though it may contain cleaning properties. The claims as amended do not rebut the teachings of patentee because the claims language "consists essentially of" does not exclude the other oxygenate additives of patentee.

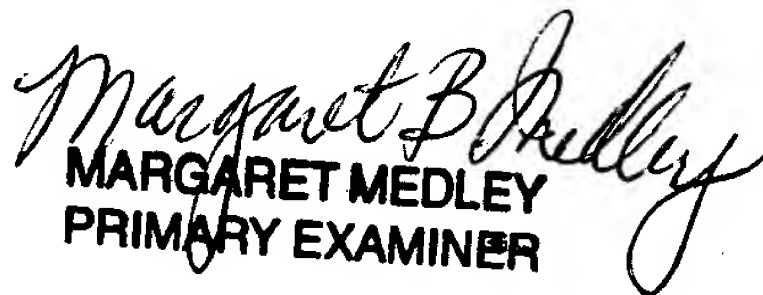
The 103 rejections are maintained in that the instant claims do not require the presence of any range limitations to overcome the teachings of the prior art cited in the 103 rejections made of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret B. Medley whose telephone number is 703-308-2518. The examiner can normally be reached on Monday-Friday from 7:30 am to 6:30 pm.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

M. B. Medley  
May 21, 2003

  
MARGARET MEDLEY  
PRIMARY EXAMINER